

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

| | | |
|--------------------|---|-----------------------|
| KENNETH MOORE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 4:20-cv-01638-HEA |
| |) | |
| ACCESS SECURE PAK, |) | |
| |) | |
| Defendant. |) | |

OPINION, MEMORANDUM AND ORDER

This matter comes before the Court on its own motion. On November 23, 2020, the Court directed plaintiff to file an amended complaint. (Docket No. 2). The Court also ordered plaintiff to either file a motion for leave to proceed in forma pauperis, or pay the required filing fee. Plaintiff was given thirty days in which to respond, but has failed to comply with either directive. Therefore, for the reasons discussed below, this action will be dismissed without prejudice. *See* Fed. R. Civ. P. 41(b).

Background

Plaintiff is a self-represented litigant who is currently incarcerated at the California Men's Colony State Prison in San Luis Obispo, California. On November 19, 2020, he filed a document with the Court that was construed as a prisoner civil rights complaint under 42 U.S.C. § 1983. (Docket No. 1). The complaint was not on a Court form, as required. Plaintiff also did not pay the required filing fee or file a motion for leave to proceed in forma pauperis.

On November 23, 2020, the Court directed plaintiff to file an amended complaint on a Court form, which was provided to him. (Docket No. 2). Plaintiff was further directed to either file a motion for leave to proceed in forma pauperis, or pay the \$400 filing fee. He was given thirty

days in which to comply. The Court advised plaintiff that failure to comply would result in the dismissal of this action without prejudice and without further notice.

Discussion

As noted above, on November 23, 2020, the Court ordered plaintiff to file an amended complaint on a Court form. He was also directed to either submit a motion for leave to proceed in forma pauperis, or pay the \$400 filing fee. He was given thirty days in which to comply. Plaintiff's responses were due on or before December 23, 2020. In the order, the Court advised plaintiff that failure to comply would result in the dismissal of this action without prejudice and without further notice.

The deadline for plaintiff to file his amended complaint, and to either file a motion for leave to proceed in forma pauperis or pay the filing fee, has expired. In fact, the Court has given plaintiff substantially more than thirty days in which to respond. Nonetheless, plaintiff has failed to submit an amended complaint, and he has failed to either submit a motion for leave to proceed in forma pauperis or pay the filing fee, as directed. He has also failed to file a motion with the Court seeking an extension of time in which to comply. Indeed, since the filing of the complaint, the Court has had no further communication with plaintiff whatsoever.

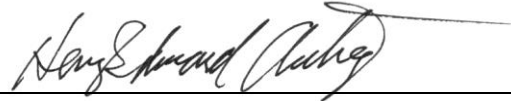
Under Rule 41(b), an action may be dismissed for failure to comply with a court order. *See* Fed. R. Civ. P. 41(b); and *Brown v. Frey*, 806 F.2d 801, 803 (8th Cir. 1986) (stating that district court may dismiss a pro se litigant's action for failure to comply with a court order on its own initiative). Because plaintiff has not complied with the Court's order of November 23, 2020, or filed any type of motion seeking an extension of time in which to comply, the Court will dismiss this action without prejudice.

Accordingly,

IT IS HEREBY ORDERED that this action is **DISMISSED** without prejudice for failure to comply with the Court's order of November 23, 2020. *See* Fed. R. Civ. P. 41(b). A separate order of dismissal will be entered herewith.

IT IS FURTHER ORDERED that an appeal from this dismissal would not be taken in good faith.

Dated this 1st day of February, 2021.

A handwritten signature in black ink, reading "Henry Edward Autrey", is written over a horizontal line.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE